

SUPREME COURT OF SEYCHELLES

Reportable
[2019] SCSC 196
CA9/2017

In the matter between

GILBERT CHARLES ELIZA
(rep. by Mrs Alexia Amesbury)

Appellant

and

PATRICK BONNE
SILVANA BISOGNI
(rep . by Mr Elvis Chetty)

1st Respondent
2nd Respondent

Neutral Citation: *Eliza v Bonne & Anors* (CA9/2017) [2019] SCSC 196 (14 March 2019)

Before: R. Govinden J

Summary: Decision on appeal from the Magistrate Court original civil jurisdiction. Supreme Court power to reevaluate trial court’s evidence.

Heard: 18 January 2019

Delivered: 14 March 2019

JUDGMENT

R.GOVINDEN J

Introduction

[1] This is an appeal to the Supreme Court against a judgment of the Magistrate Court in its civil division. The judgment which was delivered on the 30th of March 2017 was in respect of a delictual action. The Learned Magistrate gave judgment in favour of the defendants and dismissed the plaintiff’s case. The Plaintiff has appealed to this Court.

The decision of the Learned Magistrate

- [2] In the Court below the Plaintiff had sued the Defendant for the sum of SR56,062/- together with interest and costs on the basis that he suffered pain and injury as a result of a dental work carried by the 1st Defendant on the 23rd of August 2006. The Defendants had denied any faults and had put the Plaintiff to the strict proof of his case. It was the 1st Defendant's case that the "Maryland bridge" that he fixed in the mouth of the Plaintiff did not consist of dentistry work.
- [3] On the basis of evidence led before her, the Learned Magistrate had found no link between the Plaintiff's pain and suffering and the fixing of the "Maryland bridge" by the 1st Defendant in his mouth. According to the Learned Magistrate it was irrelevant whether or not the 1st Defendant was a dentist, as the 1st Defendant simply cleaned the bridge that was in the plaintiff's mouth and glued it back. The Learned Magistrate found that the cause of the wobbliness of the teeth of the Plaintiff was a result of periodontal disease which was caused due to lack of oral hygiene.

The Appeal

- [4] The Plaintiff now Appellant, has appealed to this Court on one ground, namely that the Learned Magistrate erred in dismissing the Plaintiff's action when there was sufficient evidence to find that on a balance of probabilities the dental works done by the 1st Defendant, now 1st Respondent, in the Appellant's mouth, whilst not being properly qualified, could have caused and/or initiated, and or contributed to the pain and injury suffered by the Appellant.
- [5] The Appellant therefore prays to this Court to allow the Appeal with costs and order the Respondents to pay the same claimed in the Court below or such sums as the Court deems fit in the circumstances of the case.

Submissions before the Supreme Court

Appellant's Skeleton heads of Argument and Submissions

- [6] In his skeleton heads of argument the Appellant submitted that the law, more particularly the Medical Practitioners and Dentists Act (CAP 126) forbids a person from practicing

as a doctor or a dentist whilst not properly qualified and that the 1st Respondent was representing himself as a dentist and was practising as a dentist without a license. It is also his submission that evidence in the Court below show that if the 1st Respondent was an experienced dentist he would have seen that the Appellant had gum disease and would not have carried out the dental work in the Appellant's mouth.

- [7] The Appellant contended that the 1st Respondent engaged in an illegal practice and was therefore negligent and this makes him liable. In her submissions in support of the skeleton heads of argument, Mrs Amesbury, Counsel for the Appellant strenuously repeated the argument presented in the skeleton heads of argument of the Appellant.

Respondents written submission

- [8] The Respondents in their written submissions submitted that the power of this Court to reverse a trial Court findings of facts is limited. And that this limitation is applicable here as the appeal is an appeal on the facts. In support of this argument the learned Counsel for the Respondents quoted the *SCA case of AG v/s Ernestine SCAR 1978-1987 p 373*, which held that where a question of fact has been tried by a judge without a jury and there is no question of a misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witness, could not be sufficient to explain or justify the trial's judge's conclusion.

- [9] The Respondent's Counsel submitted that the Learned Magistrate relied on the unchallenged and uncontroverted facts laid before her and that these facts cannot be revisited by this Court.

Determination

- [10] I have carefully scrutinised the facts of the case as led before the Court below and I have given careful consideration to the submissions of both counsels in this matter and the law applicable in this case. I warn myself that this is an appeal on the facts and that this Court should not intervene with the trial Magistrate conclusion on primary facts unless it is

compelled to do so because the trial Court was plainly wrong. I also note that there is a distinction between the perception of facts and the evaluation of facts and that where there is no question of credibility of witnesses and the sole question is the proper inference to be drawn from specific facts, an Appellate Court is in as good a position to evaluate the evidence as a trial judge. In these situations the appellate Court can form its own opinion whilst giving due weight to the opinion of the trial Judge (*R v Beehary 2012 SCR7*)

- [11] It is not disputed facts that Mr Patrick Bonne, the 1st Respondent, was not a registered dentist or even a registered dental technician under the Medical Practitioners and Dentists Act. It is also not disputed that this Respondent inserted a “Maryland bridge” in the mouth of the Appellant and glued it in place. It is also not disputed facts that the Appellant had come for treatment to the 2nd Respondent, who is a qualified dentist, and that in her absence the 1st Respondent did the procedure in the Appellant’s mouth. It is also uncontested that the Appellant was suffering from gum disease at the material time.
- [12] The Court below heard the evidence from two expert dental practitioners. The two dentists, were the 2nd Respondent and the other one Dr Samsoodin. The latter being the dentist that the Appellant eventually went to seek help with his teeth problem after the procedure by the 1st Respondent in his mouth.
- [13] When it comes to the handling of expert evidence testimonies. I bear in mind that this Court has the power and wisdom to test the degree of accuracy and validity of an expert opinion. *Joubert v/s Suleman 2010 SLRP248; Hoareau v/s Houareau (2011) SLR P47*. This as the trial Court is the gate keeper of expert testimony. The Court decides what is admissible in its opinions based on standards set in law and what weight to be given to expert opinions. Accordingly, I am not bound by the expert views of facts and so I find
- [14] Having so appraised myself of the facts and the law in this case. I find that the sole question before me that manifest itself in the ground of appeal appears to be what is the proper inference to be drawn from specific facts led before the learned Magistrate.

[15] Having considered the facts as she found it, I find that she did not draw the proper inference from those facts and this Court as an appellate court is in a good position to evaluate the evidence and draw inference that is contrary to that of the Learned Magistrate.

Pre-existing medical condition of the Appellant

It is accepted that the Appellant had chronic periodontal disease. This disease was diagnosed by Dr. Samsoodin 2 months after the 1st Respondent had carried out the procedure in the Appellant's mouth. According to Dr. Samsoodin, this a chronic gum disease and it make the teeth wobbly and that this condition could have been there in the Appellant's mouth many months before the latter reported to him. The 2nd Respondent also testified about the periodontal disease of the Appellant and according to her that disease should have been present when the Appellant visited her surgery for treatment by the 1st Respondent and an expert dentist should have seen the disease. She personally diagnosed this disease when the Appellant had gone to complaint about the "Maryland bridge" to her following its insertion by the 1st Respondent.

[16] This pre-existing medical condition is found to exist by the Learned Magistrate, however I find that she failed to establish its importance when it comes to the issue of liability and draw the necessary inference vis a vis the consequences of the medical procedure that 1st Respondent carried out into the mouth of the Appellant, given the existence of this disease.

[17] From the facts of the case relating to this pre-existing medical conditions I find that the 1st Respondent failed to detect the chronic gum disease of the Appellant. He never even noticed it, put aside to diagnose it. As a result he inserted and glued the "Maryland bridge" into the Appellant's mouth without being aware of an important medical condition which could have complicated this procedure. Moreover, a qualified dentist would have prescribed antibiotic for the infection as testified by the 2nd Respondent and doctor Samsoodin. The disease would have been treated before the procedure was carried out. The 1st Respondent failed to do so. He inserted a "Maryland bridge" in an already infected mouth. This would have caused an aggravation of the infection.

Lack of qualification of the 1st Respondent in dental work

- [18] The 1st Respondent was a technician in a dental surgery. His technical expertise consist of the fabricating of false teeth and related services. He has been doing this work for 25 years. He was not a dentist or a dental technician experienced in inserting of dental apparatus in patient's mouth.
- [19] Dr Bernard Valentin testified that as far as the record with the Dental and Medical Health Council shows, Mr Patrick Bonne was not a registered dentist under the Medical Practitioner and Dentist Act and that the law forbids a person to practice as a dentist without being registered.
- [20] According to the 2nd Respondent, she worked with the 1st Respondent. However, the latter was simply a technician, though she gave him authorisation to do work in mouth that does not require dental work. For example to glue back a bridge.
- [21] Dr Samsoodin, testified that the insertion of a "Maryland bridge" by the 1st Respondent does not consist of dental work and therefore could have been properly done by the 1st Respondent.
- [22] Having considered the totality of the facts on this issue I would not accept the testimonies of the two dentists. I am of the view that having found that the 1st Respondent was not a qualified dentist, the only inference that the learned Magistrate should have drawn should have been that he has no qualifications, or expertise to carry out a dental procedure in the mouth of the Appellant. She should have disregarded the evidence of two dentist in that regards. To hold that a dental technician can insert and cement a "Maryland bridge" in a patient's mouth, without the qualifications and expertise needed is tantamount to admitting that any persons working in the dental surgery could have done so as no expertise or qualifications were needed to carry out the procedure. This to my mind is a dangerous proposition that might lead to unregistered and unqualified persons to carry out dentistry work and sensitive dental procedures. Moreover, in this case, that procedure led to a failure to diagnose a dental condition. Both dentists testified about the existence

of a guide that would reveal that the 1st Respondent can do the job, but the procedural guideline was not produced in evidence to support their testimonies. Hence, I find that the 1st Respondent not being a qualified dentist, should not have done the dental work in the mouth of the Appellant.

Aveu Judiciaire (Judicial admission)

[23] An “aveu judiciaire” or judicial admission according to Article 1356 of the Civil Code of Seychelles is a declaration which a party makes in the course of the legal proceedings. It shall be accepted against the person who makes it. It may not be retracted unless it be proved that it resulted from a mistake of fact.

[24] Under cross examination by the learned Counsel for the Plaintiff the 1st Respondent testified as follows “*no dentist that day. Could have been that should not leave been working without dentist but indicated we can help if clients come with broken bridge. Probably should not have done work in his mouth*”.

[25] When it comes to this admission the learned Magistrate simply made reference to it but failed to consider its legal implications and validity and its consequential effect on the case before Court.

[26] Having considered this testimony I consider it to be a judicial admission by the plaintiff that he should probably have not carried out the work in the mouth of the Appellant, he being unqualified to do the job.

[27] I accept the admission made by the 1st Respondent, being the person who made it. It is an admission made under oath that he should not have carried the dental work in the mouth of the Plaintiff. This was an admission of the plaintiff and the plaintiff’s case.

[28] Given the above findings, I find that there was enough evidence to show the causal relationship between the acts or omissions of the 1st Respondent and the pain and suffering of the Appellant and his subsequent dental treatments, regarding the “Maryland bridge”. The 1st Respondent committed a fault by carrying out a dental procedure whilst

not being a dentist and as a result failed to diagnose a pre-existing medical condition of the Appellant.

[29] Accordingly, I would dismiss and set aside the learned Magistrate judgment and award the Appellant Rs50,000/- for moral damage, for pain, suffering, anguish, trauma and Rs6062.00 as cost for corrective surgery.

[30] I, therefore, enter judgment jointly and severally against the two Respondents and in favour of the Appellant in the total sum of SR56,062.00 with interest and cost as of the date of this judgment.

Signed, dated and delivered at Ile du Port on the 14th March 2019.

Govinden J